CONTEMPT—VALIDITY OF ORDER—ADJOURNMENT OF COURT.—The defendant, who had violated an injunction, was ordered in contempt and fined by the judge after the court had adjourned for the term. *Held*, the order adjudging the defendant to be in contempt is void. *State* v. *Highsmith* (S. C.), 90 S. E. 154.

It is not denied that the power to punish for contempt is inherent in every judicial tribunal, and no statutory enactment is necessary to confer this power. *Rottman* v. *Bartling*, 23 Neb. 848, 37 N. W. 668. See *Ex parte Robinson*, 19 Wall. 505. And the power to punish for contempt cannot be taken away by the legislature declaring that a party charged with contempt shall upon demand have a change of judge or venue or a trial by jury. *Smith* v. *Speed*, 11 Okl. 95, 66 Pac. 511, 55 L. R. A. 402.

Contempts are divided into civil and criminal. A civil contempt is the violation of some order granted primarily to benefit a party litigant. *State* v. *Shepherd*, 177 Mo. 205, 76 S. W. 79, 99 Am. St. Rep. 624. A court having the power to grant such an order during vacation also has power to punish for its violation, where the nature of the case seems to make it necessary that the remedy for disobedience be as prompt as the order itself. *Klinck* v. *Black*, 14 S. C. 241; *O'Bear* v. *Little*, 79 Ga. 384, 4 S. E. 914. See *Smith* v. *Speed*, *supra*. But a criminal contempt is an act committed against the majesty of the law or against the court as an agency of government and about which the whole people are concerned. *State* v. *Shepherd*, *supra*. And the imposition of fine for such a contempt is a judgment in a criminal case. See *Fischer* v. *Hayes*, 6 Fed. 63. Hence, a judgment and sentence in case of criminal contempt rendered out of court is void. *State* v. *Nathans*, 49 S. C. 199, 27 S. E. 52. Such proceedings are but the personal command of a judge and without jurisdiction. *Ex parte Ellis*, 37 Tex. Crim. R. 539, 40 S. W. 275, 66 Am. St. Rep. 831; *State* v. *McKinnon*, 8 Ore. 487. Where the proceedings are before the judges but the judges retire to their chamber for convenience, they are still considered to be in court and a judgment rendered therein is valid. See *Lathrop* v. *Clapp*, 40 N. Y. 328, 100 Am. Dec. 493.

CONTRACTS—BREACH—IMPOSSIBILITY OF PERFORMANCE.—The defendant agreed to furnish plaintiff's cattle with "plenty of good grass, water and salt during the grazing season." On account of an act of God, an unprecedented drought, it became impossible for the defendant to perform his contract, and the plaintiff sued to recover the damage occasioned him thereby. *Held*, the plaintiff can recover. *Berg* v. *Erickson*, 234 Fed. 817.

The general rule is well settled, that where a person by a positive and absolute agreement undertakes to perform a certain act, he will not be absolved from liability when, by an unforseen accident, performance has become impossible. *Knappman Whiting Co.* v. *Middlesex Water Co.*, 64 N. J. L. 240, 45 Atl. 692, 81 Am. St. Rep. 467, 49 L. R. A. 572; *Adams* v. *Nichols*, 19 Pick. (Mass.), 275, 31 Am. Dec. 137. This rule is based on the ground that where one of two innocent parties

must suffer the one who charged himself with the obligation should bear the loss. 3 KENT COMM. 467. So it is generally held, though uniformity of decision is practically unattainable, that one will not be permitted to escape paying damages if there can be a substantial performance of the contract though literal performance is rendered impossible by an act of God. *School Dist.* v. *Dauchy*, 25 Conn. 530, 68 Am. Dec. 371; *McGehee* v. *Hill*, 4 Port. (Ala.) 170, 29 Am. Dec. 277; *Supt. of Public Schools* v. *Bennett*, 27 N. J. L. 513, 72 Am. Dec. 373.

It is obvious that a strict application of this rule will lead to great and unwarranted hardship in many cases; and so there are several well recognized exceptions to the rule, based upon the presumed intention of the parties. See *Singleton* v. *Carroll*, 6 J. J. Marsh. (Ky.) 527, 22 Am. Dec. 95; *Beach* v. *Crain*, 2 N. Y. 86, 49 Am. Dec. 369. Thus, where the impossibility is created by the law the general rule does not apply and the promisor is exonerated. *American Mercantile Exchange* v. *Blunt*, 102 Me. 128, 66 Atl. 212, 120 Am. St. Rep. 463, 10 L. R. A. (N. S.) 414, 10 Ann. Cas. 1022. But, as all contracts are made subject to the right of the state to prohibit certain acts in the exercise of the police power, the prohibition of the sale of liquor will not release a tenant from his obligation to pay rent for premises leased for use as a saloon. *Goodrum Tobacco Co.* v. *Potts-Thompson Liquor Co.*, 133 Ga. 776, 66 S. E. 1081, 26 L. R. A. (N. S.) 198; *Houston Ice & Brewing Co.* v. *Keenan*, 99 Tex. 79, 88 S. W. 197. So the promisor is released from liability when his death or sickness prevents him from performing a contract for personal services. *Blakely* v. *Sousa*, 197 Pa. St. 305, 47 Atl. 286, 80 Am. St. Rep. 821; *Marvel* v. *Phillips*, 162 Mass. 399, 38 N. E. 1117, 44 Am. St. Rep. 370, 26 L. R. A. 416; *Dickel* v. *Linscott*, 20 Me. 453.

Where the continued existence of the subject matter of the contract is essential to the performance, there is an implied condition that the subject matter will continue to exist, and its subsequent destruction relieves the promisor from all liability. *Taylor* v. *Caldwell*, 3 B. & S. 826; *Dexter* v. *Norton*, 47 N. Y. 62, 7 Am. Rep. 415; *Singleton* v. *Carroll*, *supra*. And for the same reason, it is held in many jurisdictions, that the performance of a contract will be excused where conditions essential to its performance do not exist. *Kinzer Construction Co.* v. *State* (Ct. Cl., N. Y.), 125 N. Y. Supp. 46. See *Buffalo etc. Co.* v. *Bellevue etc. Co.*, 165 N. Y. 247, 59 N. E. 5, 51 L. R. A. 951. While the modern tendency is in favor of recognizing this exception to the general rule, there are cases holding the contrary. *Supt. of Public Schools* v. *Bennett*, *supra*.

CORPORATIONS—LIABILITY FOR TORTS—PUNITIVE DAMAGES.—The appellee was assaulted by servants of the appellant corporation, acting within the scope of their authority. Such assault exposed the servants to a criminal prosecution; the corporation, however, not being subject to a criminal prosecution. *Held*, the appellant is liable for exemplary damages. *Indianapolis Bleaching Co.* v. *McMillan* (Ind.), 113 N. E. 1019. For principles involved, see 1 VA. LAW REV. 157.